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Attorneys for Defendants  
LANGUAGE LINE, LLC  
and LANGUAGE LINE SERVICES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NATHALIE THUY VAN,

Plaintiff,

v.

LANGUAGE LINE, LLC, LANGUAGE LINE  
SERVICES, INC., and DOES 1-20;

Defendants.

Case No. 5:14-CV-03791-LHK

**DEFENDANTS' MOTION IN LIMINE  
NO. 4 TO EXCLUDE EVIDENCE OF  
CLAIMS RESOLVED THROUGH  
MOTION FOR SUMMARY JUDGMENT**

Complaint Filed: 08.21.2014  
Amended Complaint Filed: 04.22.2015  
Trial Date (Jury): 07.25.2016

Defendants' Language Line, LLC and Language Line Services, Inc. ("Language Line") hereby move in limine for an order to exclude at trial any evidence or reference regarding claims or issues dismissed pursuant to the Court's rulings on the summary judgment motions. Language Line also requests that the court instruct Plaintiff to avoid any mention of such topics during trial.

Evidence regarding a claim resolved through a motion for summary judgment should be excluded as irrelevant. Fed. R. Evid. 401-402; *Multimedia Patent Tr. v. Apple Inc.*, No. 10-CV-2618-H (KSC), 2012 U.S. Dist. LEXIS 191199, at \*16 (S.D. Cal. Nov. 20, 2012) (granting motion in limine to preclude evidence regarding claims and issues dismissed pursuant to summary judgment rulings by the Court); *Brown v. Kavanaugh*, No. 1:08-cv-01764-LJO-BAM PC, 2013 U.S. Dist. LEXIS 61892, at \*5-6 (E.D. Cal. Apr. 29, 2013) (granting in part motion in limine to preclude evidence on matters pled and dismissed as irrelevant under Fed. R. Evid. 401.)

The court granted Language Line's motion for partial summary judgment as to its various statute of limitations defenses. Docket 244 (59:20-60:14). The longest applicable statute of limitations is on Plaintiff's Unfair Competition Law (UCL) claim, which is subject to a four-year statute of limitations. Cal. Bus. & Prof. C. § 17208; *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000). Plaintiff filed her complaint in Federal Court on August 21, 2014. Thus, all claimed damages prior to August 21, 2010 are barred by the statute of limitations.

Any such evidence outside the statute of limitations is irrelevant. Fed. R. Evid. 401-402. Therefore, the following evidence should be excluded: (1) Plaintiff's alleged damages regarding unpaid wages, overtime, meal, and rest periods prior to August 21, 2010;<sup>1</sup> (2) Plaintiff's house foreclosure which occurred on or before August 7, 2008;<sup>2</sup> (3) Plaintiff's negative credit rating and credit card debt;<sup>3</sup> and (4) Plaintiff's requests for payroll and time records and Language Line's

<sup>1</sup> See Docket 212-1 (Exhibit 9 – bates pages 005177-005191); Docket 212-2 (Exhibit 10); Docket 212-11 (Exhibit 52 – bates pages 002411, 003012-003016, 003034, 003011); Docket 212-12 (Exhibit 54 – bates pages 002865-002913); Docket 212-14 (Exhibit 55); Docket 212-14 (Exhibit 56); Docket 212-16 (Exhibit 63).

<sup>2</sup> See Docket 212-16 (Exhibit 63 – bates pages 001835-001836, 007264-007265).

<sup>3</sup> See Docket 212 (¶ 22); Docket 212-16 (Exhibit 63 – bates page 001837). Plaintiff stipulated through counsel that there was no claim for credit card debt in this case. Van Depo., 143:18-22 On the basis of that stipulation, no deposition questions were asked regarding Plaintiff's credit card debt. If Plaintiff is permitted to disavow that stipulation and present such evidence at trial Language Line would be prejudiced.

1 responses.<sup>4</sup>

2 The Court also granted Language Line's motion for summary judgment to dismiss  
3 Plaintiff's retaliation, intentional infliction of emotional distress (IIED), and contract claims.  
4 Docket 244 (60:6-11). The following evidence related to these three claims are therefore  
5 irrelevant and should be excluded: (1) Frank Perry allegedly calling Plaintiff "cuckoo;"<sup>5</sup> (2)  
6 claims that Plaintiff was "forced and threatened" to sign an at-will agreement;<sup>6</sup> (3) that the  
7 department code was changed in Plaintiff's employee profile;<sup>7</sup> (4) that Plaintiff's performance  
8 evaluation rating was allegedly changed from Exceeding Expectations to Meets Expectations;<sup>8</sup> (5)  
9 that Plaintiff was offered a video remote interpreter position;<sup>9</sup> (6) all evidence regarding the  
10 settlement/mediation sessions in this case;<sup>10</sup> (7) that Plaintiff complained to various governmental  
11 agencies;<sup>11</sup> (8) the 1997 AT&T offer letter;<sup>12</sup> (9) the 1999 Asset Purchase Agreement;<sup>13</sup> (10) that

12 <sup>4</sup> See Docket 212-8 (Exhibit 31). Docket 244 (36:2-3 ["Plaintiff may not recover for the alleged  
13 violations of section 226(c)"].)

14 <sup>5</sup> See Docket 212-9 (Exhibit 34). Plaintiff relies on this allegation in support of her IIED and  
15 retaliation claims. Docket 211 (12:9-10, 14:3-4). Plaintiff has issued a trial subpoena for her  
16 process server.

17 <sup>6</sup> Docket 221 (11:15-18); Docket 222 (¶ 42). Indeed, "the evidence shows that Plaintiff's  
18 employment was at will before Plaintiff was asked to sign the April 21, 2015 agreement." Docket  
19 244 (44:3-5).

20 <sup>7</sup> Docket 222 (¶ 43).

21 <sup>8</sup> Docket 222 (¶ 39).

22 <sup>9</sup> Docket 221 (11:9-11).

23 <sup>10</sup> Under Federal Rule of Evidence 408, "furnishing, promising, or offering...valuable  
24 consideration in compromising or attempting to compromise the claim" is not admissible "to  
25 prove or disprove the validity...of a disputed claim." Therefore, the Court should exclude all  
26 evidence regarding settlement/mediation, including the deposition testimony by Frank Perry that  
27 Plaintiff's termination was discussed as part of the settlement. Docket 211 (12:21-28). The Court,  
28 in its ruling on the cross-motions for summary judgment, granted Language Line's motion as to  
Plaintiff's retaliation claim and concluded that "Perry's discussion of Plaintiff's possible  
termination during mediation was not an adverse employment action." Docket 244 (42:12-13).  
Therefore, any such evidence should be excluded as irrelevant. Fed. R. Evid. 401-402.  
Furthermore, that statement was clearly made in the context of mediation. Permitting evidence  
that Plaintiff's termination was a condition of a settlement agreement will likely confuse and  
mislead the jury to believe that her termination (or that attempting to terminate her) is an issue in  
this case. Fed. R. Evid. 403. In fact, it is not. Plaintiff is still an employee of Language Line.

<sup>11</sup> Plaintiff has reported her claims to the Labor Department (Docket 222, ¶¶ 80, 108-109), the  
Monterey County District Attorney (Docket 222, ¶ 12, 111), the Internal Revenue Service  
(Docket 222, ¶ 61, 146), Homeland Security (Docket 222, ¶ 98), and US Representative Mike  
Honda (Docket 222, ¶ 110). Evidence regarding these complaints is irrelevant because the Court  
granted Defendants' Motion for Summary Judgment as to Plaintiff's retaliation claim.  
Additionally, admission of this evidence is unduly prejudicial and will waste time by requiring  
Language Line to rebut these allegations. Fed. R. Evid. 403.

<sup>12</sup> Docket 212-1 (Exhibit 2).

<sup>13</sup> Docket 218-29 through Docket 218-34 (Exhibit BB).

1 Plaintiff is owed holiday pay, floating holiday pay, night differential pay, annual raises, vacation  
 2 pay, pay for being scheduled less than 40 hours a week, pay for 4 excused days, and 401k  
 3 contributions.<sup>14</sup>

4 Alternatively, the evidence described above, regarding claims dismissed or time limited as  
 5 a result of Language Line's motion for summary judgement should be excluded under Federal  
 6 Rule of Evidence 403. Any probative value of the above referenced evidence is substantially  
 7 outweighed by the danger that the jury will be misled and confused as to whether damages and  
 8 conduct outside the applicable statute of limitations can be the basis of liability. The admission of  
 9 such evidence would constitute a waste of time since the Court has already decided these issues.  
 10 Furthermore, Language Line would be unduly prejudiced by being forced to take time during the  
 11 short two-day trial to explain and rebut the evidence which the Court has already determined is  
 12 not legally sufficient to establish liability.

13 Language Line requests that the Court also exclude any reference to the fact that the  
 14 parties brought motions for summary judgment prior to trial or the Court's rulings on those  
 15 motions. Such references are inappropriate because there is substantial danger that the jury would  
 16 be improperly swayed by the Court's ruling in determining the merits of the remaining claims.

17 For the above reasons, Language Line respectfully requests that the Court grant its motion  
 18 in limine any evidence or reference regarding claims or issues dismissed pursuant to the Court's  
 19 rulings on the summary judgment motions, including the evidence cited herein, as well as any  
 20 reference to the fact that the parties brought motions for summary judgment prior to trial.

21 DATED: June 16, 2016

JACKSON LEWIS P.C.

22 By: /s/ Sander van der Heide

23 Joel P. Kelly

Sander van der Heide

24 Attorneys for Defendants

25 LANGUAGE LINE, LLC

26 and LANGUAGE LINE SERVICES, INC.

27 <sup>14</sup> All these claims of unpaid wages are based on the alleged "contract" for which Language  
 28 Line's motion for summary judgement has been granted. Docket 221 (14:25-19:16, 20:14-27,  
 22:12-24:25).

**PROOF OF SERVICE**

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis P.C., 400 Capitol Mall, Suite 1600, Sacramento, California 95814.

On June 16, 2016 I served the within:

**DEFENDANTS' MOTION IN LIMINE NO. 4  
TO EXCLUDE EVIDENCE OF CLAIMS RESOLVED  
THROUGH MOTION FOR SUMMARY JUDGMENT**

on Plaintiff in said cause by - **OVERNIGHT DELIVERY** - by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Federal Express or delivering to an authorized courier or driver authorized by Federal Express to receive documents, addressed as set forth below:

NATHALIE THUY VAN  
1037 N ABBOTT AVE  
MILPITAS CALIFORNIA 95035

Telephone: (408) 262-3163

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 16, 2016, at Sacramento, California.

/s/ Kelly Asano